

HORIZON COMMUNICATIONS

IBLA 85-502

Decided April 30, 1986

Appeal from decision of the Price River Resource Area Manager, Bureau of Land Management, Price, Utah, requiring payment of rental for communication site right-of-way U-48040.

Affirmed.

1. Appraisals--Communication Sites--Federal Land Policy and Management Act of 1976: Rights-of-Way--Rights-of-Way: Generally

An appraisal of fair market value for a communication site right-of-way will not be set aside on appeal if an appellant fails to show error in the appraisal methods used or fails to show by convincing evidence that the charges are excessive. In the absence of a showing of error that the appraisal methods used by BLM are incorrect, an appraisal may be rebutted only by another appraisal.

APPEARANCES: Wanda Faussone, Treasurer, Starner Drilling Company, Inc., for Horizon Communications.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Horizon Communications (Horizon), a solely owned subsidiary of Starner Drilling Company, Inc., appeals from a February 27, 1985, decision of the Price River Resource Area Manager, Bureau of Land Management (BLM), Price Utah, requiring rental of \$1,575 for communications site right-of-way U-48040.

The right-of-way, consisting of .23 acres located on Cedar Mountain in lot 4, sec. 18, T. 19 S., R. 12 E., Salt Lake Base and Meridian, Utah, was originally granted to appellant on December 17, 1981, pursuant to section 501(a)(5) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1761(a)(5) (1982). The permitted use included "[i]nstallation, use and maintenance of a building, radio antenna, and powerline for a communications site." BLM's decision granting that right-of-way specified a 30-year term, effective the date of the decision. BLM required a \$25 advanced rental deposit, but explained that the actual charges would be determined after a formal appraisal. BLM stated that the rental would be payable at the beginning of each 5-year period.

A BLM appraiser inspected the site on January 4, 1985. In his report dated January 11, 1985, the appraiser stated that the majority of available comparable data was derived from communication site leases with the Utah Division of State Lands as the lessor. He explained that the rental fees charged by the State "are accomplished irrespective of components of value," ^{1/} except for size, whereby the State assigns a rental fee of \$600 per year for sites .5 acres or more.

The appraiser stated that he analyzed all comparable rentals in the market, and that given a predominance of State leases, "strength of the subject rental estimate lies in that data." Comparable site lease data for 10 sites were included with the appraisal report. The annual rental for all of the leases compared was \$400, with the exception of 3 leases, which were superior in size and for which the rental was \$600 per year.

On January 25, 1985, BLM issued a decision determining the fair market rental value for the site to be \$400 per year. BLM requested Horizon to remit \$ 1,575 (\$400 a year for 4 years less \$25 rental deposit) to cover the rental period from December 17, 1981 through December 16, 1985. Citing 43 CFR 2803.1-2(e) and 43 CFR 2803.4(b), BLM informed Horizon by decision dated February 27, 1985, that it would be allowed 30 days from receipt of the decision in which to remit \$1,575 and that the right-of-way would be cancelled if it failed to do so. Horizon appealed that decision.

In its statement of reasons, appellant emphasizes that there is "very minimal use of the right-of-way." It explains that the communications system was geared to the oil and gas industry, and that due to economic conditions relating to that industry, the system has not been utilized to capacity. Also, appellant states that because the person who originally set up the system is now deceased, it has not yet been able to pursue other possibilities for the system. Appellant asserts, for those reasons, the rental is excessive and causes undue hardship.

[1] Under 43 U.S.C. § 1764(g) (1982), the holder of a right-of-way is required to pay rental annually in advance for the fair market value of the right-of-way when this value is established by an appraisal, although BLM may allow use of a right-of-way prior to a formal appraisal. Jim Doeing, 91 IBLA 131 (1986); Glover Communications, Inc., 89 IBLA 276 (1985); see also Southern California Gas Co., 81 IBLA 358 (1984); Mountain States Telephone & Telegraph Co., 79 IBLA 5 (1984). An appraisal of fair market value for a communications site right-of-way will not be set aside on appeal if the appellant fails to show error in the appraisal methods used by BLM or fails to show by convincing evidence that the charges are excessive. Jim Doeing, *supra*; Glover Communications, Inc., *supra*; see Donald R. Clark, 70 IBLA 39 (1983); Francis H. Gifford, 62 IBLA 393 (1982); Dwight L. Zundel, 55 IBLA 218 (1981); B & M Service, Inc., 48 IBLA 233 (1980). In the absence of compelling evidence that a BLM appraisal is erroneous, such an appraisal

^{1/} The components of value listed by the appraiser are: location, physical characteristics, access, power, tenure, time, and size.

generally may be rebutted only by another appraisal. Dwight L. Zundel, *supra* at 222.

The comparable lease method of appraisal, used by BLM in this case to determine the fair market value, is the preferred method for appraising the fair market value of communication sites where there is sufficient comparable rental data. See Southern California Gas Co., *supra*; Mountain States Telephone & Telegraph Co., *supra*. The BLM appraiser considered a number of leases in the vicinity of appellant's right-of-way. After consideration of the differences and similarities between those leases and appellant's right-of-way, the fair market annual rental value for appellant's right-of-way was determined. Appellant has shown no error in the appraisal methods used by BLM, nor has it provided another appraisal or any evidence that the charges are excessive, particularly in light of the rental rates for other leases in the area.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge

